

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.	Rulemaking 93-04-003 (Filed April 7, 1993)
Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.	Investigation 93-04-002 (Filed April 7, 1993) (Verizon UNE Phase)

**ADMINISTRATIVE LAW JUDGE'S RULING
ALLOWING LIMITED SURREBUTTAL AND REVISING SCHEDULE**

This ruling formalizes a ruling distributed via electronic mail to the parties on January 6, 2005. (*See* Attachment A.)

Motion for Surrebuttal

On December 3, 2004, Verizon California, Inc. (Verizon) filed a motion requesting leave to file limited surrebuttal testimony in this case to address revisions to the HM 5.3 cost model and alleged new factual matters raised in rebuttal testimony by AT&T Communications of California, Inc. (AT&T) and MCI, Inc. (collectively, Joint Commentors). Verizon contends the scope and magnitude of the HM 5.3 model changes are sweeping and that three new factual issues were raised improperly. The three issues involve the qualifications of Verizon's witness, Richter, the use of Integrated Digital Loop Carrier (IDLC), and engineering guidelines in a 1995 NYNEX study. Therefore, Verizon maintains

due process requires it be allowed to comment on the new version of HM 5.3 and the new factual issues submitted by Joint Commentors in their November 9, 2004 rebuttal filing. In the alternative, Verizon requests the Commission to strike these portions of Joint Commentors' rebuttal filings from the record. In addition, Verizon requests permission to submit a revised version of its own cost model to provide changes it described but did not submit in its rebuttal testimony.

In response to Verizon's motion, Joint Commentors oppose all of Verizon's requests. First, Joint Commentors maintain that the changes presented in rebuttal were not sweeping and were made in response to criticisms by Verizon. Therefore, these model changes are not inappropriate and there has been no due process violation requiring the Commission to give Verizon one more opportunity to comment. Second, Joint Commentors contend that the three new factual issues are not unusual or improper and do not merit additional surrebuttal. Finally, Joint Commentors oppose Verizon's request to further modify its cost studies because there is no change in circumstances supporting this late filing.

The Utility Reform Network /Office of Ratepayer Advocates (TURN/ORR) urge a postponement of price floor filings if Verizon is allowed to modify its cost studies with a further filing. They also suggest that Joint Commentors and Verizon each file a summary table explaining their most recent cost modeling changes.

Verizon's motion is granted in part and denied in part, as explained more fully below. Verizon's motion essentially contains three requests – to file surrebuttal on the HM 5.3 model, to file surrebuttal on three factual issues, and to file revisions to the Verizon cost models.

First, Verizon's request to file surrebuttal testimony on HM 5.3 modeling changes is denied. It appears that the HM 5.3 model changes submitted by Joint Commentors in their rebuttal directly respond to Verizon's criticisms in the reply round of comments. To ensure this is the case, I have directed Joint Commentors to file a summary table, as suggested by TURN/ORR, which provides a description of the modeling changes in the November 9, 2004 version of HM 5.3, a citation to the criticism by Verizon the change responds to, and a citation to the location in the November 9, 2004 rebuttal testimony where the modeling change is described. This summary table was filed by Joint Commentors on January 21, 2005. I will allow Verizon an opportunity to respond to this summary table. Verizon's response should be limited to 25 pages and provided no later than March 15, 2005. Verizon's response should focus on errors or omissions in the Joint Commentor's summary table. If I conclude that Joint Commentors' HM 5.3 modeling changes were not responsive to criticism or were not explained in the rebuttal round of comments, I may strike those modeling changes from the record in a subsequent ruling. Therefore, I will not rule at this time on Verizon's alternative request to strike the rebuttal version of HM 5.3.

Second, regarding Verizon's request to file limited surrebuttal on three new factual issues, I will grant Verizon's request. Although it is highly unusual to allow surrebuttal, I find that an extremely limited surrebuttal is justified in this case. Joint Commentors should have challenged Richter's qualifications in reply rather than rebuttal, so Verizon should be given the opportunity to defend its witness. I will limit Verizon to 2 pages of surrebuttal on this topic. In addition, Joint Commentors' witness provided new information on IDLC in another state that has only recently become available. I will allow Verizon to respond to this

new information and again, I will limit Verizon to 2 pages of surrebuttal on this topic. Finally, Joint Commentors reference a NYNEX study in rebuttal comments which Verizon itself used for a different subject in an earlier comment round. I will allow Verizon a maximum of 3 pages of surrebuttal to respond to the Joint Commentors' testimony regarding the NYNEX study because I find the record will benefit from understanding Verizon's position on this study.

Third, I will deny Verizon's request to submit further revisions to its cost studies. Verizon had an opportunity in the rebuttal phase to amend its cost filings and it chose to describe potential changes rather than actually provide them. This is sufficient and it would unnecessarily delay this proceeding to allow Verizon to further modify its cost filings at this late date.

Revised Schedule

Given the rulings herein related to the preparation of a summary table on HM 5.3 changes and limited surrebuttal, the schedule for this proceeding warrants modification. In addition, Verizon made a verbal request in a February 24, 2005 conference call with the Administrative Law Judge (ALJ) for a two week extension to file its price floor rebuttal comments. The request was unopposed. Therefore, the revised schedule for the remainder of this case is as follows:

January 21, 2005	Joint Commentors submit summary table of rebuttal changes to HM 5.3
January 28, 2005	Reply comments on Price Floor Issues and limited surrebuttal by Verizon on three factual issues raised in December 3, 2004 motion.
March 15, 2005	Response by Verizon to Joint Commentors' Summary Table
April 1, 2005	Rebuttal comments on Price Floor Issues.
April 15, 2005	Deadline for motions requesting hearings on Price Floor issues.

	Floor issues. ¹
May 2, 2005	Ruling on need for hearings on cost studies, modeling, UNE pricing, and Price Floor issues and submission of case if hearings not required.
August 2, 2005	Proposed Decision Issued (if hearings not required).

If Hearings Required:

Date to be determined	Evidentiary Hearings
Date to be determined	Concurrent opening briefs
Date to be determined	Reply briefs and case submitted
Date to be determined	Proposed Decision issued

Revised Schedule

A copy of all filings should be sent electronically to the service list and to ALJ Dorothy Duda at dot@cpuc.ca.gov.

IT IS RULED that:

1. The December 3, 2004 motion by Verizon California to file limited surrebuttal is granted in part in that it may a maximum 7 page surrebuttal limited to the three factual issues described in this ruling.
2. Verizon's requests to file surrebuttal testimony on HM 5.3 and to file changes to the Verizon cost studies are denied, but its motion to strike changes to HM 5.3 from the rebuttal filing is pending further review of HM 5.3.

¹ Any motions must justify the need for an evidentiary hearing by identifying the material disputed factual issues on which hearing should be held. In addition, any motion should identify the general nature of the evidence the party proposes to introduce at the requested hearing. Any right a party may otherwise have to an evidentiary hearing for the presentation of facts will be waived if the party does not follow the above procedure for a timely request.

3. The schedule for the permanent phase of this proceeding is revised as set forth in this ruling.

Dated March 7, 2005, at San Francisco, California.

/s/ Dorothy Duda
Dorothy Duda
Administrative Law Judge

Attachment A

From: Duda, Dorothy

Sent: Thursday, January 06, 2005 1:31 PM

To: pcronin@mpowercom.com; dlee@snavely-king.com; chuther@prestongates.com; cronis@wilmer.com; mhazzard@kelleydrye.com; Terrance.Spann@hqda.army.mil; ann.johnson@verizon.com; jwakefie@covad.com; esther.h.northrup@xo.com; esther.h.northrup@xo.com; elaine.duncan@verizon.com; rcosta@turn.org; steve.bowen@bowenlawgroup.com; glenn@stoverlaw.net; william.harrelson@mci.com; davidjmiller@att.com; mlt@tobiasalliance.com; rejohnson@att.com; deanhardt@att.com; jclark@gmssr.com; mmattes@nossaman.com; davidmarchant@dwt.com; ens@loens.com; esprague@pacwest.com; megant@prestongates.com; jcompton@telscape.net; jasmin.e.milles@verizon.com; bonniea@adnc.com; pagemont@cox.net; mmulkey@arrival.com; cmailloux@turn.org; leah@strategiesllc.net; jk1786@sbc.com; LV8571@sbc.com; stephanie.krapf@sbc.com; michael.morris@algx.com; smalllecs@cwclaw.com; deyoung@caltel.org; jcharles@csuhayward.edu; jsf@joefaber.com; pceguera@covad.com; jthierio@pacwest.com; cborn@czn.com; daniel.kim@asm.ca.gov; Poschl, Christopher; Duda, Dorothy; Billingsley, Natalie; Wales, Natalie; King, Paul; Phillips, Paul; Litkouhi, Simin; Banuelos, Victor; Fung, William; Johnston, William; Lofaso, Alan; Machado, Carlos
Subject: Ruling on Verizon Motion for Surrebuttal

All:

To memorialize our conference call earlier today, I denied Verizon's motion to file surrebuttal testimony on changes in HM 5.3 and to file changes/corrections to the Verizon cost model, but I reserve judgment on whether to strike portions of the HM 5.3 rebuttal cost model if changes are not adequately described and/or responsive to criticism from earlier comments. I did request AT&T/MCI (Joint Commenters) to provide a summary table listing all changes made to HM 5.3 in the November 9, 2004 rebuttal filing, no later than Jan. 21. The table should provide a brief "before/after" description of the features of HM 5.3 that were modified in the rebuttal round. (I suggest starting with the listing of changes alleged by Verizon in its motion for this before/after description, and adding to it if there are more changes to describe). The table should include cites to where in the rebuttal testimony the changes were explained and a cite to criticism by another party in earlier round of comments that led to the modeling change.

I granted Verizon's request to file limited surrebuttal on the three new facts contained in JC's 11/9 rebuttal filing, namely Richter's qualifications (2 page maximum surrebuttal), IDLC (2 page limit), and cites to the NYNEX study (3 page limit). Verizon's limited surrebuttal is due on January 28.

Price floor filing dates are as follows:

Reply comments – January 28

Rebuttal comments – March 18

Deadline for motions requesting hearings – April 1

I will send an official ruling at a later date.

Dorothy J. Duda

Administrative Law Judge

California Public Utilities Commission

415-703-2800

dot@cpuc.ca.gov

(END OF ATTACHMENT A)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Allowing Limited Surrebuttal and Revising Schedule on all parties of record in this proceeding or their attorneys of record.

Dated March 7, 2005, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.